

The Elements of an Offence

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Learning Outcomes

After completing this chapter, you should be able to:

- Identify and understand the elements of an offence.
- Distinguish between the different types of *actus reus*.
- Distinguish between the different types of *mens rea*.
- Demonstrate an understanding of the role of voluntariness in the *actus reus* of an offence.
- Explain the difference between objective and subjective *mens rea*.

Introduction

reasonable doubt
very high standard of proof that the Crown must meet to prove the guilt of the accused person

actus reus
Latin term that is often translated as “the guilty act”; it involves the physical elements of a criminal offence

mens rea
Latin term that is commonly translated as “the guilty mind”; it involves the mental or fault elements of a criminal offence

We know that the prosecution must prove a criminal offence beyond a **reasonable doubt**. But what is it exactly that the Crown must prove? She must prove the elements of the offence beyond a reasonable doubt.

An offence is made up of two separate elements. The first element is the **actus reus**. The *actus reus* comprises the physical elements of the offence that describe the wrongful conduct or actions or physical circumstances in which the offence was committed. The second element is the **mens rea**, which comprises the mental aspects of the offence.

Actus Reus

Actus reus is a Latin term that is often translated as “the guilty act.”

Despite the term “guilty act,” not all offences have an *actus reus* that involves an action or a behaviour. Some offences involve the accused being found in certain *circumstances*. Others entail a *failure* to act. In short, the types of *actus reus* may be broken down into the following categories:

1. offences that require an action, conduct, or certain behaviour;
2. offences that involve the accused being found in certain prescribed circumstances;
3. offences that involve the failure of the accused to act (omissions); and
4. offences that cause certain consequences to occur.

These categories are discussed in the following sections and examples.

Offences Requiring Action, Conduct, or Behaviour

Section 372(2) creates the offence of making an indecent communication. It reads:

372(2) Everyone commits an offence who, with intent to alarm or annoy any person, makes any indecent communication to that person or to any other person by means of a telecommunication.

This offence requires the accused to perform a certain action. They must make a communication that the Crown must prove is indecent.

Offences Requiring the Accused to Be in Specific Circumstances

Section 201(2)(a) makes it an offence to be found in a common gaming or betting house¹ without a lawful excuse for being there. The section reads:

201(2) Every one who
(a) is found, without lawful excuse, in a common gaming house or common betting house, ...
is guilty of an offence punishable on summary conviction.

¹ Section 197(1) of the *Criminal Code*, RSC 1985, c C-46 provides definitions of “common gaming house” and “common betting house.”

To be charged with this offence, the accused need only be in the house without a lawful reason. (Lawful reasons for being there, for example, might be to read the electric meter or make a pizza delivery.) Being there is enough to meet the test of completing the *actus reus* of this offence. The accused need not actually be engaged in the illegal gambling that is occurring there.

Possession offences involving various items or substances are other examples of this type of offence relating to circumstances. According to sections 354(1)(a) and (b):

354(1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

- (a) the commission in Canada of an offence punishable by indictment; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

For example, a person who stores property in her garage, knowing it is stolen, need not have committed or even been involved in stealing the property; merely having it in her possession is sufficient in terms of establishing the *actus reus*.

Offences Involving Failure to Act: Omissions

There are a number of offences in the *Criminal Code* (the Code) that have an *actus reus* for a failure to do something, which is known as an **omission**. However, no one can be convicted of any offence involving a failure to act unless she has a legal duty to act. The duty can be one created by the Code or by another statute. For instance, section 215 creates a legal duty for a specific person, such as a parent or guardian, to supply a child with the necessities of life. Failure to meet this duty is a criminal offence. It is regularly charged in cases of child neglect. Sections 215(1) and (2) state:

omission

a type of *actus reus* in which the accused person fails to do something that he is legally required to do

215(1) Every one is under a legal duty

- (a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;
- (b) to provide necessities of life to their spouse or common-law partner; and
- (c) to provide necessities of life to a person under his charge if that person
 - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
 - (ii) is unable to provide himself with necessities of life.

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

- (a) with respect to a duty imposed by paragraph (1)(a) or (b),
 - (i) the person to whom the duty is owed is in destitute or necessitous circumstances, or
 - (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.²

The breakdown of the *actus reus* into the above categories is done to assist us in analyzing various offences and identifying the *actus reus* required. However, not all offences in the Code fall neatly into one type of *actus reus*. Many offences have an *actus reus* that involves conduct, action, or behaviour that must occur within a set of certain circumstances. For instance, section 265 creates the offence of assault. Section 265(1)(a) reads as follows:

265(1) A person commits an assault when
(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

The *actus reus* of this offence is applying force to another person, directly or indirectly. Applying force involves an action. However, to meet the complete *actus reus* for the offence, the force must have been applied without the consent of the person to whom the force was applied. The element of consent is a circumstance that frames the required action.

Offences That Cause Certain Consequences and Causation

There are a number of offences in the Code that require a consequence as part of the *actus reus*. An example of an offence that has a consequence is the offence of causing a disturbance in section 175:

175(1) Every one who
(a) not being in a dwelling-house, causes a disturbance in or near a public place,
(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
(ii) by being drunk, or
(iii) by impeding or molesting other persons, ...
is guilty of an offence punishable on summary conviction.

To prove the *actus reus* of this offence, the Crown must prove not only that the accused acted in one of the proscribed ways, while not being in a dwelling house (circumstances), but also that the actions of the accused caused a disturbance. A disturbance in or near a public place must be proved to have been the consequence of the accused's actions, behaviour, or conduct. For instance, if the accused was quietly staggering home drunk down a deserted street, the Crown might have significant difficulty in securing a conviction.

² It should be noted that the wording in s 215(2), "the proof of which lies on him," has been struck down by the Ontario Court of Appeal as a violation of s 11(d) of the *Canadian Charter of Rights and Freedoms* because it places an onus of proof on the accused that cannot be justified under s 1. Therefore, the section must now be read as though those words do not form a part of it. The Crown must now prove beyond a reasonable doubt that the accused did not have a lawful excuse for his failure to act. *R v Curtis* (1998), 123 CCC (3d) 178 (CA).

In these offences that require a consequence, the Crown must prove beyond a reasonable doubt that the conduct of the accused caused the particular consequence. In other words, the Crown must prove **causation**. This causal link can usually be proved fairly easily. For instance, if the drunken person in our above scenario was rolling home down the street, singing and yelling, and woke up all the neighbours, it would not be difficult to show a direct link between the behaviour of the accused and the disturbance caused to the neighbours.

causation

part of the *actus reus* of some criminal offences where the Crown is required to prove that the actions or behaviour of the accused resulted in or caused a specified consequence

Voluntariness of the Actus Reus

The actions of the accused in committing the *actus reus* of the offence must be conscious and voluntary. There is no criminal responsibility in Canadian law for actions that are illegal if the accused did not act consciously and voluntarily. Some defences that might go to the voluntariness of the defendant's conduct are necessity, duress, and automatism. For example, if the accused can successfully raise the defence of duress (let's say that she can establish that she was forced at gunpoint to commit the offence), she may be acquitted of the offence on the basis of her actions not being voluntary. Likewise, if the defence could prove that the accused was sleepwalking while committing the offence, she may be acquitted on the basis that she was acting as an automaton in an unconscious manner.

It is important to distinguish voluntariness of the *actus reus* from the mental element of the offence—that is, the *mens rea*. In the above scenario, the accused fully intends to commit the offence because she doesn't want to be shot and possibly killed. However, as noted, her action in committing the offence is not voluntary.

Mens Rea

Mens rea is a Latin term that is commonly translated as “the guilty mind.” We do not apply criminal sanctions to a person on the basis of their actions only. A person may perform the same actions with entirely different intent. Before a person can be found criminally responsible for her actions, the courts must be satisfied that she had a state of mind that was blameworthy—that there was a level of fault. It is the *mens rea* that establishes the fault element of the offence.

For instance, earlier we looked at section 265 of the Code, the offence of assault. We learned that the *actus reus* necessary for that offence is that force must be applied to another person without that person's consent. However, there is a difference between someone getting angry and pushing the person with whom they are angry and someone pushing another person on a crowded bus in an attempt to keep his balance when the train stops suddenly. In both cases the actions are the same, the application of force to another without consent. We are all likely to agree that the latter situation, pushing someone inadvertently on a crowded bus, is not one in which we would apply criminal consequences, whereas pushing someone in anger may very well be criminal in nature. The difference is the mental element involved in the application of force. In the first scenario, the application of force is morally blameworthy, and in the second, it is not.

Subjective and Objective Mens Rea

The law recognizes several types of *mens rea*. In the 1993 Supreme Court of Canada case *R v Creighton*,³ the court made a clear distinction between subjective and objective *mens rea*.

Subjective *mens rea* is concerned with the actual intention or knowledge of the accused. It is concerned with “what was actually going on in the mind of this particular accused at the time in question.” Subjective *mens rea* requires proof that the accused “intended the consequences of his or her acts, or that knowing of the probable consequences of those acts, the accused ... proceeded recklessly in the face of the risk.”

Objective *mens rea* is not concerned with what was happening in the mind of the accused. It is not established by proving what the particular accused intended or knew, but rather by applying the **reasonable person test**. What would a reasonable person, in the same circumstances as the accused, have understood to be the risk of his actions? In the words of the court in the *Creighton* case, “Objective *mens rea* is not concerned with what was actually in the accused’s mind, but with what should have been there, had the accused proceeded reasonably.”

In order to clearly distinguish the criminal test for objective *mens rea* from the non-criminal test for mere negligence, the Supreme Court has determined that the correct standard in criminal law is that the accused’s conduct was a “marked departure” from the standard of care that a reasonable person would have applied in the circumstances.⁴

Although any accused with sufficient *mens rea* to be found guilty of an offence is morally blameworthy, those accused who commit the *actus reus* with a subjective *mens rea* are generally regarded as being more blameworthy than those who have an objective *mens rea*. Those with subjective *mens rea* have deliberately made a choice to engage in wrongful behaviour. The courts therefore recognize various levels of fault, with the most serious levels being those offences that require proof of subjective intent. Subjective intent may involve intention, knowledge, **recklessness**, or **wilful blindness** on the part of the particular accused.

In addition to the levels of *mens rea* required for true criminal offences, there are also regulatory, quasi-criminal, and/or provincial offences that are less serious in nature and that may therefore involve less serious levels of fault-finding. These less serious levels of fault-finding are referred to as strict liability offences and absolute liability offences.

The common law presumption is that subjective *mens rea* is required for true criminal offences unless the wording of the federal statute that creates the offence clearly contemplates an objective level of fault or *mens rea*.⁵

In relation to regulatory or provincial offences there is a presumption that the offence is strict liability, but some of these quasi-criminal offences contain wording that clearly requires a higher level of fault such as intention, knowledge, wilful blindness, or recklessness. In addition, some of these offences also contemplate a conviction without any level of fault.

reasonable person test

an objective test for *mens rea* in which the court does not look at what was in the mind of the actual accused person before the court, but rather at what an ordinary person of normal capabilities, in the same circumstances as the accused, would have understood to be the risk of her actions

recklessness

a type of *mens rea* in which the accused fully understands the risk of harm associated with his behaviour or actions and engages in the behaviour despite the risk

wilful blindness

a type of *mens rea* in which the accused person intentionally closes his eyes to obvious criminal actions in an attempt to claim that he did not know that the actions were criminal

3 [1993] 3 SCR 3, 83 CCC (3d) 346.

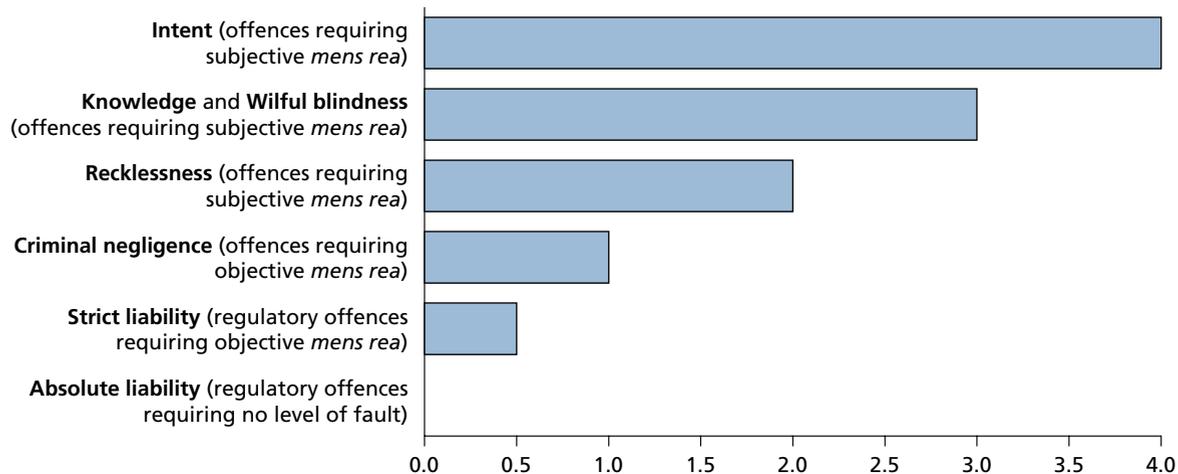
4 *R v Hundal*, [1993] 1 SCR 867, 79 CCC (3d) 97 at 108.

5 *R v Sault Ste Marie (City)* (1978), 40 CCC (2d) 353 (SCC).

We may therefore break down the levels of fault or the level of *mens rea* required for various offences as shown in Figure 5.1.

We will examine each level of *mens rea* in detail.

FIGURE 5.1 Levels of Mens Rea



Levels of Mens Rea

Intention

Some offences require the Crown to prove that the accused actually meant to perform the *actus reus*; that she purposely went about causing the consequences of her actions. For example, we have already examined section 265 of the Code, which states that an assault is committed when someone, without the consent of another person, applies force intentionally to that other person.

It is the intentional nature of the conduct that distinguishes an assault from an accidental push when the crowded bus comes to a sudden halt.

In some sections of the Code, the words “intention” or “intentionally” will actually be used to identify this level of *mens rea*, but in other sections the wording used may involve terms such as “wilful,” “wilfully,” “purposely,” or something similar. Courts have interpreted these words referring to a deliberate action to mean the same as the words “intention” or “intentionally.”

In other sections of the Code, no specific wording is used to describe the intention at all. Rather, it must be inferred from the conduct of the accused. For instance, section 343 lays out the requirements for the offence of robbery:

343. Every one commits robbery who ...
(d) steals from any person while armed with an offensive weapon or imitation thereof.

There is no mention of the words “intention,” “intentionally,” or anything similar, but if a person goes into a bank armed with a sawed-off shotgun and demands money from a teller, it can be inferred that she intended to rob the bank.

INTENTION VERSUS MOTIVE

When looking at the issue of intention, it is important to differentiate between intention and motive. Motive is the reason that the accused may have committed the offence. It may be of some help to the police as an investigative tool in finding the person who committed the offence or it may even be presented as evidence in a trial where it helps to implicate the accused as the person who committed the offence, but a person can be, and often is, convicted of an offence without any motive having been established. There is no requirement that the Crown prove any motive for the offence whatsoever.

On the other hand, a person may have a very good motive for committing an offence. A woman arrested for theft of food from a store may have stolen the food to feed her hungry children, but if she intended to steal the food, she will be found guilty of the offence. The court may deal with a situation of this type in sentencing, but the motive does not have anything to do with the guilt or non-guilt of the accused.

Knowledge

For many offences, it is necessary for the Crown to establish *mens rea* by proving beyond a reasonable doubt that the accused had knowledge of certain facts. Section 201(2)(b) of the Code states:

201(2) Every one who ...

(b) as owner, landlord, lessor, tenant, occupier or agent, knowingly permits a place to be let or used for the purposes of a common gaming house or common betting house,

is guilty of an offence punishable on summary conviction.

In order to be convicted of this offence, the owner, landlord, lessor, tenant, occupier, or agent must actually know that the premises are being used in the proscribed manner.

Wilful Blindness

Knowledge is often the level of *mens rea* required in offences involving possession. For instance, section 354 of the Code lays out the offence of possession of stolen property:

354(1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

For an accused to be found guilty of this offence, the Crown must prove beyond a reasonable doubt that he knew that the property was stolen. However, what if the accused is observed by the police buying, from the back of a van outside the local pub, a brand new, big-screen television for \$50? Will it be a satisfactory defence for the accused to claim that he did not know that the goods were stolen?

He may not have asked the seller where she obtained the goods, and so may not “know,” in the usual sense of the word, that the goods were stolen, but it is obvious that a brand new, big-screen television costs much more than \$50 and that if someone is selling such an item for that price out of the back of a van, outside a pub, it was not obtained by the seller in a legal fashion. In these circumstances, claiming that he didn’t know the goods were stolen amounts to deliberately closing his eyes to the obvious. That is wilful blindness.

Recklessness

Recklessness and wilful blindness are very closely related. Recklessness can be defined as gross carelessness or negligence. In the context of criminal law, it is carelessness that is so extreme that it amounts to criminal fault. When we are talking about recklessness, we are not talking about a situation where the accused meant or intended the wrongful consequences of his actions. We are talking about a situation in which he, even while aware of the risk that wrongful consequences could result from his actions, engaged in the actions anyway.

For example, let’s say that a student in a crowded classroom becomes frustrated and throws an empty glass bottle of juice at a wall with considerable force. The bottle breaks on impact and the pieces fly all over, striking the people nearby. The angry student did not intend to hit people with broken glass shards, but was aware that throwing a breakable object like a glass bottle at a wall in a crowded room could result in people being struck by broken bits of glass.

In the case of *Sansregret*,⁶ the Supreme Court of Canada determined that recklessness must involve a subjective foresight to meet the test for criminal fault or *mens rea*. The reasonable person standard is not sufficient for criminal recklessness. Rather, the accused must actually have foreseen the risk of harm arising from his actions and then taken the risk that harm would not result. The accused must be aware of the wrongful consequences that his actions could cause. If the accused was not aware of the potential risk of harm, then the Crown will be unable to prove recklessness.

In addition, the risk taken must be unjustifiable. In some instances, taking a risk may be totally justifiable. For example, a surgeon may perform emergency brain surgery on an unconscious accident victim to try to reduce bleeding in the brain. The surgery may carry a risk of the patient dying, but that risk can be justified as an attempt to save the victim’s life.

There are a number of sections in the Code that actually use the words “reckless” and “recklessly.” For example, the offence of criminal harassment provides as follows:

264(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage

6 *Sansregret v The Queen*, [1985] 1 SCR 570.

in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

However, even where the words are not expressly set out in the section creating the offence, the test for the *mens rea* of recklessness may be met if the Crown can prove that the accused subjectively foresaw the risk of his actions and took the risk anyway.

Criminal Negligence

Although the Supreme Court of Canada has determined that there is a presumption that criminal *mens rea* must involve a subjective standard, there are offences in which the wording created by Parliament in the Code creates a primarily objective test for *mens rea*. It applies to offences of **criminal negligence**, such as under section 219 of the Code, causing death by criminal negligence.

The test that the courts must apply in determining criminal negligence in the most serious offences, such as causing death, is whether or not the conduct of the accused showed a marked and substantial departure from that of a reasonable person in the circumstances.⁷ For less serious offences, it is whether the accused showed a marked departure in conduct from that of a reasonable person in the circumstances.⁸ The test is objective in that it applies the standard of the reasonable person and not the actual awareness of the accused. The accused's capabilities would not normally be given consideration unless it could be established that he was incapable of understanding the risk or consequences. That would only occur in the rarest of cases. This is primarily an objective test that has a subjective aspect because it takes into account the abilities of the actual accused person. A person with limited capacity may not be aware of the potential consequences of his conduct and therefore may not be convicted depending on the charge and the circumstances.

Strict Liability

Strict liability, like **absolute liability**, is a standard that applies primarily in regulatory offences, including provincial offences. In fact, as noted above, there is a presumption that most regulatory offences are strict liability offences. The purpose of these offences is to regulate some sort of conduct and they are not viewed as serious criminal offences, even though some of them may result in the imposition of a jail term.

If an offence is a strict liability offence, the Crown is required to prove beyond a reasonable doubt the *actus reus* of the offence. Once the *actus reus* has been properly proved, the Crown need not prove a *mens rea*. Due to the regulatory nature of an offence based on simple negligence, the fault element of the offence is presumed to exist once the *actus reus* has been proved. However, the defendant then has the opportunity to raise the defence of **due diligence** and to prove it on the balance of probabilities. Due diligence involves the defendant proving lack of negligence. For instance, in an environmental offence, the defendant corporation may attempt to

criminal negligence

a type of *mens rea* in which an objective standard is applied to determine the mental element of some offences

strict liability

a regulatory offence (non-criminal) that requires the Crown to prove only the *actus reus* and not the *mens rea* of the offence—the accused may raise the defence of due diligence

absolute liability

a regulatory offence (non-criminal) that has no fault element—the Crown need only prove the *actus reus* of the offence and the accused may not raise any defence as to his intention

due diligence

a defence to a strict liability offence in which the accused attempts to establish that he or she took every reasonable precaution to avoid committing a regulatory offence

7 *R v JF*, 2008 SCC 60, [2008] 3 SCR 215.

8 *R v Beatty*, 2008 SCC 5, [2008] 1 SCR 49.

establish that it took all reasonable precautions to prevent the chemical pollutant it was using in its manufacturing process from escaping into the air.

To successfully raise due diligence, the defendant must prove on the balance of probabilities that it

- took reasonable care not to commit the illegal act, or
- made a reasonable mistake of fact (not of law), which, if true, would have made the act legal.

Absolute Liability

Absolute liability is a standard that can only apply in relation to some regulatory offences. The standard does not involve a concept of fault. The Crown must prove the *actus reus* beyond a reasonable doubt and the defendant has no recourse to the defence of due diligence. In other words, the defendant will be held responsible for her actions whether or not she was at fault.

Offences involving absolute liability have resulted in a number of Charter challenges on the basis that people who were morally innocent could be punished. However, the Supreme Court of Canada has established that an absolute liability offence does not violate the Charter as long as it does not involve a possible jail term as punishment.⁹ If there is no potential for incarceration, even though a morally innocent person may be convicted, her section 7 Charter rights have not been violated because the penalty does not place her liberty at stake.

⁹ *Re BC Motor Vehicle Act*, [1985] 2 SCR 486 and *R v Pontes*, [1995] 3 SCR 44, 100 CCC (3d) 353.

CHAPTER SUMMARY

In this chapter we examine, in some detail, the elements of an offence, the *actus reus*, and the *mens rea*. *Actus reus* is generally translated from Latin as “the guilty act,” and *mens rea* is translated as “the guilty mind.” However, the terms encompass more than these simple, general definitions. We look at both the *actus*

reus and the *mens rea* to identify different types of *actus reus* and *mens rea* that might be found in an offence and look at examples of each. We discuss the role of voluntariness required for the commission of the *actus reus* and the important difference between a subjective and an objective *mens rea*.

KEY TERMS

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REVIEW QUESTIONS

1. What are the two elements of an offence and what does each Latin term generally mean?
2. How can the *actus reus* be broken down into different types?
3. Under what circumstances can a person be convicted for failing or omitting to do something?
4. What role does voluntariness play in determining whether or not the *actus reus* has been committed?
5. What is the difference between a subjective *mens rea* and an objective *mens rea*?
6. What are the different types of *mens rea*?
7. Explain how the Crown may prove the *mens rea* of an offence by establishing wilful blindness.
8. Can an accused person be convicted of an offence on the basis of recklessness even if the wording of the section creating the offence does not include the words “reckless” or “recklessly”?
9. What is the difference between a *mens rea* involving recklessness and one involving criminal negligence?
10. Can there be any true criminal offences that involve absolute liability?

EXERCISES

1. Bonnie and Asha, two college students, are in a restaurant. They get into a heated argument about their criminal law examination. Bonnie sweeps her arm across the table in anger, purposely knocking the glasses and dishes off the table and onto the floor, where they shatter. One of the shards of glass flies up and makes a small cut on Asha’s leg. Can Bonnie be convicted of assault under section 265(1)(a) of the Code?
2. The accused, named Thomas, was a former drug addict who had contracted hepatitis C, an extremely serious medical infection, from a dirty needle. He was very well aware that he was suffering from hepatitis C and also knew that the infection could be transmitted to others through blood. Despite this, he decided to donate blood. Fortunately, all collected blood was tested for various transmittable diseases, including hepatitis C, and during testing it was discovered that Thomas’s blood donation was infected. The blood was never given to anyone and was eventually destroyed.

Following the discovery of the hepatitis C in his blood donation and the fact that Thomas knew he had the disease when he donated it, he was charged under the Code with being a common nuisance. Do you think he will be convicted? Explain your answer.
3. Marty and Farah are a married couple who live together with their two-year-old child. Marty is taking care of Farah and their child because Farah was severely injured in a car accident a month ago. She broke both of her legs and one arm, and her broken limbs are in large casts. She cannot get out of bed, feed herself, or even hold her child. One evening, when he was feeling very stressed out, Marty left his wife and child alone in the house and went out for a very long walk. When he got back several hours later, he found that his wife and child had been severely injured in a fire caused by the child playing with matches. Can Marty be convicted of any offence?
4. Stephen was in a restaurant in Toronto with his friends. A group of American tourists came in and one of Stephen’s friends decided to have some fun. He had a toy badge in his pocket that he had bought for his six-year-old brother to use as part of his police officer Halloween costume. He gave Stephen the badge and convinced him that it would be hilarious to play a practical joke on the Americans. Stephen went over to the Americans’ table, flashed the fake badge, and told them that he was an FBI agent who had them under surveillance. He said they were all under arrest for suspected terrorist activity. At first the tourists became quite frightened. However, once they realized they had been the victims of a silly prank, they called the Toronto police and the police arrested Stephen for impersonating a peace officer.

Do you think Stephen will be convicted of this offence? Explain your answer.